

700 CMR 13.00: APPROVAL OF ACCESS TO MASSACHUSETTS DEPARTMENT OF TRANSPORTATION HIGHWAYS AND OTHER PROPERTY

Section

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13.01: Scope, Objective, and Use of MassDOT Property

- (1) MassDOT may issue Standard Operating Procedures to implement 700 CMR 13.00.
- (2) Scope and Intent. 700 CMR 13.00 is intended to provide evaluation criteria concerning requests to enter and/or use MassDOT property or MassDOT Interests and to establish a procedure for review, approval and processing of such requests. 700 CMR 13.00 applies broadly to three types of Permit applications to MassDOT:
  - (a) Vehicular Access Permits;
  - (b) Non vehicular Access Permits; and
  - (c) Small Wireless Facility Permits.Applications for Vehicular Access Permits are intended to benefit from the expedited Permit review features contained in 700 CMR 13.03(5) and (6), as well as to the procedures for administrative appeals, 700 CMR 13.05(7), as the grant or denial of such Permits may affect the rights of specific Persons. Applications for Non-vehicular, and Small Wireless Facility Access Permits will not be subject to administrative appeals, unless otherwise provided for under any applicable state law or regulation, as there is no right to conduct the activities for which such Permits are sought on the State Highway Layout (SHLO) or other MassDOT property. In cases where a particular Project or activity may seek both vehicular and non vehicular access, separate and distinct Permit applications should be filed.
- (3) Determination of Need for an Access Permit. A prospective Permit Applicant may request a determination from the District Highway Director for the District in which the Project, work, or activity is located as to whether, in a particular instance or circumstance, an Access Permit is required. Any prospective Applicant seeking such a determination must provide all necessary and appropriate information requested by the District Highway Director upon which the District Highway Director can evaluate the request and base the determination. The District Highway Director will issue such determination in writing within ten business days of receipt of such necessary and appropriate information.
- (4) Use of MassDOT Property. Unless otherwise provided in a Permit, License or other written grant of authorization from MassDOT, the following shall be considered impermissible uses of MassDOT property:
  - (a) Any use that interferes with official MassDOT business and/or the safe operation of any of its roads and facilities;
  - (b) Any use that MassDOT in its sole discretion determines likely to jeopardize public safety or the safety and security of MassDOT, its personnel, or property;
  - (c) Any use that causes disruption of MassDOT activities or the peace and quiet of property owners and communities adjacent to MassDOT's property;
  - (d) Any use that interferes with the authorized use of MassDOT's property by third parties, including without limitation any public body or agency, public utility, private entity, corporations, or persons;
  - (e) Any use that MassDOT determines in its sole discretion to present an unacceptable risk of personal injury or damage to property;
  - (f) Commercial activity such as the sale or distribution of food, beverages, or tobacco products;
  - (g) Signage, displays, or advertising of any sort;
  - (h) Telecommunications;

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- (i) The construction or erection of any permanent or temporary structure;
- (j) Parking or storage of any vehicle or other personal property, other than in areas expressly designated for such purposes;
- (m) Open fires or barbecues;
- (n) The use, generation, storage, release, or disposal of any hazardous materials as defined by applicable federal and Massachusetts law; and/or
- (o) Any use that is contrary to MassDOT policies or other guidelines and procedures concerning the general use of properties or use of specific properties; or to the statutes, rules or regulations of the Commonwealth; or to any applicable local ordinances, bylaws, and regulations.

13.02: Definitions

Agent. An individual or entity acting on behalf of the applicant. While the permit is issued to the applicant, the agent represents the applicant's interests during the permit review, permit issuing, and post-issue process.

Agent Letter. A signed and notarized letter from the Applicant that is required to formally document that the Agent is authorized to act on behalf of the Applicant. The agent letter may represent multiple projects with the same Agent and must be renewed on an annual basis.

Americans with Disability Act (ADA). An act that prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation.

Annual Maintenance Permit. A Permit issued on an annual basis, typically to municipalities, utilities and emergency response entities, allowing access to their infrastructure and our Right of Way to respond to emergencies, and to perform inspections and maintenance. This type of permit excludes roadway openings and capital improvements.

Applicant. The person applying for a Permit, License, Lease, or other authorization to access MassDOT property.

Application. A written submission, including in electronic format, requesting authorization to access MassDOT property.

Average Daily Traffic (ADT). The total trip generation of a proposed facility calculated using the techniques of the most recent Institute of Transportation Engineers Trip Generation Manual and expressed as passenger car equivalents to account for truck traffic.

Best Management Practices (BMPs). Activities or structural improvements that help reduce the quantity and improve the quality of stormwater runoff. BMPs include treatment requirements, and operating procedures and practices to control site runoff, spillage, or leaks.

Category I – Vehicular Access Permits with Minor Impacts. Access Permits for Projects that require entry to the State Highway Layout, require little to no non-signalized modifications, and do not significantly alter the operating characteristics of traffic. These Projects ordinarily do not exceed the Massachusetts Environmental Policy Act (MEPA) transportation thresholds beyond the filing of an Environmental Notification Form (ENF), and they will be reviewed by the District Highway Director of the District within which the Project is located.

Category II – Vehicular Access Permits with Significant Impacts. Access Permits for Projects that require significant non signalized modification, including roadway improvements, that may alter the operating characteristics of traffic at a residential or commercial driveway at its intersection with the State Highway Layout; that require significant non-signalized modifications that may alter the operating characteristics of traffic at any other intersection or roadway under the jurisdiction of MassDOT or upon any roadway under the jurisdiction of MassDOT; that require installation of a new traffic signal at a residential or commercial driveway at its intersection with the State Highway Layout or at any other intersection under the

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jurisdiction of MassDOT or upon any roadway under the jurisdiction of MassDOT; or that require modification of structures, equipment, or hardware at an existing traffic signal at a residential or commercial driveway at its intersection with the State Highway Layout or at any other intersection under the jurisdiction of MassDOT or upon any roadway under the jurisdiction of MassDOT. These Projects ordinarily require MEPA review, and the proposed Project will be reviewed by the District Highway Director of the District within which the Project is located and other appropriate sections of MassDOT.

Category III – Complex Vehicular Access Permits. Access Permits for Projects that require a new or altered State Highway Layout; that require significant non-signalized and/or signalized modifications within the State Highway Layout over an extended distance or at a number of intersections that significantly alters the operating characteristics of traffic along a corridor; or that require the construction of a new, or modifications to an existing bridge. These Projects generally require MEPA review and may require Federal review. The proposed Projects will be reviewed by the District Highway Director of the District within which the Project is located, other appropriate sections of MassDOT, and the Federal Highway Administration (FHWA), if necessary.

Department or MassDOT. The Massachusetts Department of Transportation as established by M.G.L. c. 6C.

DHD. District Highway Director for MassDOT.

EEA. The Executive Office of Energy and Environmental Affairs.

Event (Non-vehicular). This Permit type authorizes the grantee to enter upon or use MassDOT property for a public or private event or gathering of not more than one day in duration. Additional periods of time may be allowed in connection with an Event for set-up and removal of any furnishings or equipment related to the event.

Filming and Photography (Non-vehicular). This Permit grants authorization to enter upon or use MassDOT property for the purposes of filming, videotaping or photographing for commercial purposes. An Access Permit is not required for filming, videotaping or photographing for personal and/or recreational purposes on the Rose Kennedy Greenway.

Grantee. The entity or person to whom the permit is issued.

Indirect Access (Vehicular). An Access Permit may be required when a property abuts and/or significantly impacts MassDOT-Highway roadways and infrastructure where access is not directly sought from a MassDOT-Highway roadway or facility.

License. Authorization to enter upon or use MassDOT property for sustained types of uses or occupancy. The issuance of a License in lieu of or in addition to issuance of a Permit is within the sole discretion of the MassDOT and will be based on the particular circumstances and information provided in the Permit application.

MassDOT Interests. Any interest, property, facilities, rights, duties or obligations of MassDOT, or the existing, contemplated or future use, operation, maintenance, repair, replacement, improvement, safety, layout or design of the State highway system, the Metropolitan Highway System, the Massachusetts Turnpike, or any federal highway, or any of their respective related components, facilities or systems, including any existing, contemplated or future easements, reservations, utilities, lighting, ventilation and life-safety systems, drainage facilities, tunnels, ramps, roadways or bridges.

MassDOT Property. Real property under the custody and control of MassDOT, regardless of whether such property is being used and laid out for highway purposes.

MEPA. The Massachusetts Environmental Policy Act (M.G.L. c. 30, §§ 61 through 62H) and implementing regulations (301 CMR 11.00: *MEPA Regulations*).

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MHC. The Massachusetts Historical Commission Act (M.G.L. c. 9, §§ 26 through 27C and implementing regulations (950 CMR 71.00: *Protection of Properties Included in the State Register of Historic Places*).

Non-vehicular Access Permits include:

- (a) Access to the State Highway Layout, or other MassDOT property for Projects that do not involve physical modifications;
- (b) Connection to or discharge to any MassDOT drainage system (in cases where it can be shown that no practicable alternative exists);
- (c) Construction or repair of utilities within the State Highway Layout;
- (d) Tree cutting or landscaping within the State Highway Layout;
- (e) The use of explosives to remove material from within 250 feet of the State Highway Layout;
- (f) Parking or storage of any vehicle or other personal property otherwise prohibited under 700 CMR 13.01;
- (g) Temporary and permanent sign installations;
- (h) Staging of equipment for MassDOT construction projects;
- (i) Events such as parades or road races;
- (j) Survey, borings, traffic counts, or other engineering services;
- (k) Temporary traffic control devices for work on, or impacting the State Highway; and
- (l) Various other types of work.

Office of Real Estate and Asset Development (OREAD). MassDOT office responsible for the management of MassDOT owned properties and layouts. Certain access permits may require separate land use agreements and/or leases issued by this office.

Owner. The Person owning the land from which access is being sought to the State Highway Layout, or the abutter in cases where a utility service connection is sought. In certain cases it may define the owner of the infrastructure located in the right of way on which or in which, access is sought, typically seen with utility poles or utility structures.

Permit. A Vehicular Access, Non-vehicular Access, or Small Wireless Facility Permit.

Person. Any individual, corporation, partnership, trust, association, or other business or non-profit organization; any agency, department, board, commission, or authority of the Commonwealth; and any Federal, municipal, or regional governmental or intergovernmental agency, department, board, commission, authority, or other entity.

Project. Any work or activity undertaken by a Person that requires or may seek vehicular and/or non-vehicular access.

Recreational Use (Non-vehicular). An access permit granting authorization to enter upon or use MassDOT property other than the Rose Kennedy Greenway for recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes as such uses are defined in M.G.L. c. 21, § 17C. In accordance with M.G.L. c. 21, § 17C, no charges or fees shall be imposed by MassDOT for such uses.

Right of Way (ROW). The area within the jurisdiction and control of MassDOT which:

- (a) denotes land, property, MassDOT's Interest therein, usually in a strip of land acquired for or devoted to transportation purposes;
- (b) MassDOT has designated as appropriate for utility easements; or
- (c) is a public roadway, highway, street, sidewalk, or alley including, specifically, the area between the inner edges of any adjacent paved sidewalks paralleling said public roadway, highway, street, sidewalk, or alley or, where there is no paved sidewalk, the land paralleling said public roadway, highway, street, sidewalk, or alley in which, in MassDOT's reasonable determination, a Small Cell Facility or Small Cell Structure may be located without violating applicable health and safety codes, and applicable MassDOT policies.

Section 61 Findings. The findings issued by MassDOT pursuant to M.G.L. c. 30, § 61.

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Signature: Hand-written or Electronic Signature. Electronic or E-signature to mean an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Small Wireless Facility. Facilities that meet the following conditions:

- (a) The facilities:
  - 1. are mounted on structures 50 feet or less in height (including the antenna);
  - 2. are mounted on structures no more than 10% taller than other adjacent structures; or
  - 3. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10%, whichever is greater;
- (b) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
- (c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than 28 cubic feet in volume;
- (d) The facilities do not require antenna structure registration under 47 CFR Part 17;
- (e) The facilities are not located on Tribal lands, as defined under 36 CFR § 800.16(x); and
- (f) The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

Small Wireless Permit. An access permit issued by MassDOT to install a Small Wireless Facility in the Right of Way.

State Highway Access Permit System (SHAPS). MassDOT's online access permit submission, review, and issue tool available to permit Applicants and their Agents.

State Highway Layout (SHLO). Commonwealth property under the custody and control of MassDOT being used and laid out for highway purposes; this does not include parcels under the custody and control of MassDOT which are not being used for highway purposes.

Structure. A pole, tower, building, bridge or other structure to which a Small Wireless Facility can be attached in compliance with the requirements contained herein and all other applicable health and safety codes and design and safety standards applicable to MassDOT Property

Substantial Increase in or Impact on Traffic. A Project that meets or exceeds any of the following thresholds:

- (a) Generation of 2,000 or more new ADT on roadways providing access to a single location;
- (b) Generation of 1,000 or more new ADT on roadways providing access to a single location and construction of 150 or more new parking spaces at a single location;
- (c) Construction of 300 or more new parking spaces at a single location; or
- (d) Creation of a change in the type, pattern, or timing of traffic that is determined by MassDOT to generate a significant impact on traffic flow and safety.

Utility Accommodation Policy (UAP). MassDOT highway policy governing the acceptable use(s) of the State Highway Layout for various utilities and the procedures required for obtaining permitted access.

Vehicular Access Permit. Vehicular Access Permits are required for:

- (a) New residential or commercial driveways or streets intersecting the State Highway Layout;
- (b) Existing residential or commercial driveways or streets that intersect the State Highway Layout that do not have a permit;
- (c) Physical modifications to existing residential or commercial driveways or streets at their intersection with the State Highway Layout;
- (d) Change in land use of an existing residential or commercial property with driveway onto State Highway Layout that results in a Substantial Increase in or Impact on Traffic over the current use; and

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- (e) Construction of new, or change in use of existing, residential or commercial driveway from properties that abut the State Highway Layout to serve a building or facility, or expansion of a building or facility, that generates a Substantial Increase in or Impact on Traffic.

13.03: Permit Application Processing

(1) Submission of Application. The District Highway Director within whose District boundaries access is sought shall be responsible for issuance of Permits. Applications are reviewed on a first come, first served basis. An Applicant or their agent shall request issuance of a Permit using the online SHAPS tool, or by submitting a standard form issued by MassDOT. The application shall include all support material required on the application form. The application form shall be filed with the District Highway Director within whose District boundaries access is sought.

(2) Completeness Review. Any materials submitted for MassDOT review as part of a Permit application will be date stamped by the District Permits Engineer upon his or her receipt. Upon receipt, the District Highway Director or his or her designee shall review the contents of the application to determine if any materials necessary to conduct a detailed review are missing. The District Highway Director or his or her designee shall notify the Applicant of any missing documentation within ten-business days from the stamped date or the application will be considered complete and the detailed review period shall begin. For purposes of calculating review time, day one shall be the first business day after receipt of an Application. When an Application is deemed incomplete, the ten-business day review period will start from zero upon resubmission of the required documents. The completeness review process shall be followed until the District Highway Director or his or her designee determines that the application contains all of the material necessary to conduct a detailed review.

(3) Completeness of Application. A Permit application shall be determined to be complete by the District Highway Director or his or her designee once the following items have been received and determined to be in a format acceptable to conduct a detailed review:

- (a) A signed MassDOT Permit application, including those applications submitted through SHAPS with all information items appropriately completed;
- (b) All supporting data as required during the application process
- (c) Evidence of EEA certification of MEPA compliance, if necessary. This includes evidence of having been granted a waiver of or otherwise completed MEPA for a portion of the Project;
- (d) A Section 61 Finding issued by MassDOT, for those Projects where an Environmental Impact Report (EIR) was required under MEPA relative to a MassDOT Access Permit, unless waived by MassDOT;
- (e) Engineering plans in a format acceptable to the District Highway Director or his or her designee to conduct a detailed review where work within the State Highway Layout, or on MassDOT Property is required. No engineering plan shall be deemed acceptable unless the State Highway record baseline and sidelines are clearly shown and the proposed work is tied into the record baseline;
- (f) A check or money order payable to the Massachusetts Department of Transportation, or other electronic payment method as it may be available, in the amount indicated on the permit application;
- (g) A certificate of insurance evidencing the coverage indicated in the Permit application or as otherwise required by MassDOT in its sole discretion; and
- (h) Any and all federal, state, and local approvals required by the District Permit Engineer to issue or proceed with the review of the permit application. These include, but are not limited to: Massachusetts Historical Commission review, local Board and Conservation Commission Approvals, OREAD agreements, local ADA coordinator review, Old Kings Highway Commission review, dig safe number, and submission of a trench rider.

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(4) Required Signatures for Permit Applications. The Applicant must provide MassDOT with evidence certifying the consent to the application by the property Owner(s), as required by MassDOT on the Permit application form. If an agent is representing an Applicant, the application shall include a notarized agent letter from the Applicant outlining the specific duties and responsibilities of the agent. Where work is proposed on a public, private, or municipal utility, the respective utility department must provide a signature on the application as the Applicant(s).

(5) Time Limits for Detailed Application Review. The maximum review times for Vehicular and Non-vehicular Permit applications are as follows:

(a) Category I Permits. The detailed review of the first submission (ordinarily the 25% Design) shall be completed within 20 business days following a determination by the District Highway Director or his or her designee that the application is complete. The detailed review of the second submission (ordinarily the 75%/100% Design) shall be completed within 20 business days following receipt by the District Permits Engineer. The detailed review of the final submission (ordinarily final Plans, Specifications, and Estimates (PS&E)) shall be reviewed within ten business days following receipt by the District Permits Engineer. Once the PS&E submission is approved, the District Highway Director will issue the Permit authorizing the work to be performed in accordance with the procedures outlined in 700 CMR 13.03(6).

(b) Category II Permits. The detailed review of the first submission (ordinarily the 25% Design/Functional Design Report) shall be completed within 35 business days following a determination by the District Highway Director or his or her designee that the application is complete. The detailed review of the second submission (ordinarily the 75%/100% Design) shall be completed within 20 business days following receipt by the District Permits Engineer. The detailed review of the final submission (ordinarily final PS&E) shall be reviewed within 20 business days following receipt by the District Permits Engineer. Once the PS&E submission is approved, the District Highway Director will issue the Permit authorizing the work to be performed in accordance with the procedures outlined in 700 CMR 13.03(6).

(c) Category III Permits. Review submissions and associated review time frames will be negotiated by the Applicant and MassDOT. Negotiations shall commence within 15 business days of receipt of a written request by the Applicant to the Chief Engineer. If a mutual agreement is not reached within 40 working days following the commencement of the negotiation, non binding arbitration by an arbiter acceptable to both parties shall be used.

(d) Non-vehicular Access Permits. Non-vehicular Access Permits will be reviewed by the District Highway Director of the District within which the Project is located; provided, however, that the District Highway Director may refer any such application to the Chief Engineer for review and the Chief Engineer may remove any such application from the District for review. Such Permits shall be reviewed in accordance with 700 CMR 13.03(5)(b) and issued in conformance with MassDOT Standard Operating Procedures. Non-vehicular Access permits may not require 25%, 75/100%, and PS&E design submissions. The District Permit Engineer will determine the submission requirements and which design stages (if any) may be eliminated in the review/submission process based on the specific permit request.

If MassDOT fails to meet any of the time frames outlined in 700 CMR 13.03(5), the Applicant may notify the District Highway Director in cases involving a Category I Permit and the Chief Engineer in cases involving Category II or III Permits in writing that a review deadline has expired. In such cases, the District Highway Director or the Chief Engineer shall ensure that the applicable review is completed no later than five business days from receipt of such notification. Once the PS&E submission is approved, the District Highway Director will issue the Permit authorizing the work to be performed in accordance with the procedures outlined in 700 CMR 13.03(6).

(e) When the District Highway Director determines after a detailed review of a 25%, 75%/100% or PS&E design submission that a resubmission is required, the review process timelines outlined in 700 CMR 13.03(5) will restart at zero upon resubmission of the requested design documents.

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(6) Ten-day Permit Issuance Deadline. Once the PS&E submission is approved, the District Highway Director shall issue the associated Vehicular or Non-vehicular Permit within ten business days. The dated Permit with the District Highway Director's hand written or electronic signature will constitute issuance of the permit. If the District Highway Director has not issued the Permit within ten business days, the Applicant may notify the Chief Engineer in writing or through MassDOT's electronic online permitting system. In such cases, the Chief Engineer shall ensure that the Permit is issued within two business days of receipt of the Applicant's notice and receipt of the following, if not already in the Permit file:

- (a) For Projects with a clear "area of potential impact" (as defined in 950 CMR 71.00: *Protection of Properties Included in the State Register of Historic Places*) to properties listed in the *State Register of Historic Places*, either:
1. A letter from the MHC indicating compliance with M.G.L. c. 9, §§ 26 through 27C; or
  2. Certification from the Applicant that the MHC failed to determine adverse effect within 30 days of its receipt of an MHC Project Notification Form and/or an Environmental Notification Form (ENF);
- (b) Evidence of approvals or decisions, if necessary, from the Conservation Commission in the community in which the Project is proposed; and
- (c) A Section 61 Finding issued by MassDOT, for those Projects where an Environmental Impact Report (EIR) was required under MEPA relative to a MassDOT Access Permit, if previously waived by MassDOT as part of the application process.

(7) Small Wireless Facility Permit. In addition to the requirements for permitting contained in 700 CMR 13.00, MassDOT may issue a License and Small Wireless Facility Permit in accordance with the following procedures:

- (a) Time for Processing Applications.
1. MassDOT will review applications proposing to install Small Wireless Facilities only on an existing Structure within a MassDOT Right of Way within 60 days, except as follows:
    - a. If, within ten business days from the date of receipt of an application, MassDOT determines that the application is incomplete and notifies the applicant of such deficiencies, the review period resets once the License Applicant submits the supplemental information requested by MassDOT.
    - b. If, greater than ten business days after MassDOT receives an application, MassDOT determines that the application is incomplete and notifies the applicant of such deficiencies, the review period is tolled and begins to run again once the License Applicant submits the supplemental information requested by MassDOT.
  2. MassDOT will review applications proposing to install a new Small Cell Wireless Structure within a MassDOT Right of Way within 90 days, except as follows:
    - a. If, within ten business days from the date of receipt of an application, MassDOT determines that the application is incomplete and notifies the applicant of such deficiencies, the review period resets once the Applicant submits the supplemental information requested by MassDOT.
    - b. If, greater than ten business days after MassDOT receives an application, MassDOT determines that the application is incomplete and notifies the applicant of such deficiencies, the review period is tolled and begins to run again once the Applicant submits the supplemental information requested by MassDOT.
  3. MassDOT will review applications proposing to install a Small Cell Wireless Facilities on a MassDOT owned structure within a MassDOT Right of Way within 90 days, except as follows:
    - a. If, within ten business days from the date of receipt of an application, MassDOT determines that the application is incomplete and notifies the applicant of such deficiencies, the review period resets once the Applicant submits the supplemental information requested by MassDOT.
    - b. If, greater than ten business days after MassDOT receives an application, MassDOT determines that the application is incomplete and notifies the applicant of such deficiencies, the review period is tolled and begins to run again once the Applicant submits the supplemental information requested by MassDOT.

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(b) A single application may seek authorization for multiple installments of Small Wireless Facilities and/or Structures only if all of the locations of such installations will be located on the same Right of Way, in the same Highway District, and includes the same model of Small Wireless Facility.

(c) Failure to complete the construction of a Small Wireless Facility within 12 months from issuance shall automatically result in forfeiture of the Small Wireless Facility Permit and License.

(9) Recording of Permits. MassDOT will issue the Permit to the Applicant named on the Permit application submitted to and reviewed by MassDOT. Unless otherwise noted, after expiration of all appeal rights, the Applicant shall be required to record any new Vehicular Access Permit and any Non-vehicular Access Permit involving a direct, or indirect, drainage tie in at the appropriate registry of deeds. Any Permit issued by MassDOT that requires recording shall not be effective until recorded at the appropriate registry of deeds and a notice of recording is submitted to the District Highway Director.

(10) Coordination with MEPA Review. For Projects requiring MEPA review, MassDOT will comment to the Secretary of EEA and communicate with Project proponents during the MEPA process in order to identify the Project-related highway impacts and appropriate mitigation as early as possible. Resolution of traffic mitigation requirements through the MEPA process will minimize reconsideration of mitigation during the MassDOT Section 61 and Access Permit process. In order to minimize damage to the environment caused by transportation related air pollution, including greenhouse gas emissions, MassDOT shall, in cooperation with the Secretary of EEA, review and comment on measures identified in the MEPA process to avoid, minimize, or mitigate such transportation related air pollution, and shall include as conditions in its Section 61 Finding measures to avoid, minimize, or mitigate such transportation related air pollution. Early identification of mitigation will assist Project proponents in planning and managing Project costs. MassDOT coordination with MEPA review will reduce the total time required to obtain Project approvals.

If the proponent has not already done so, MassDOT, as a permitting State Agency, has the authority and obligation to require proponents to submit their projects for a MEPA review or an advisory opinion when plan submissions indicate that MEPA review thresholds are being approached or exceeded. MassDOT may require additional traffic studies and updated site plans to confirm that MEPA review thresholds have not been exceeded. Any requests for an advisory opinion submitted to MEPA should be copied to the appropriate MassDOT and the MassDOT Public/Private Development Unit. Should a MEPA filing and review be required, MassDOT will not issue an access permit until the MEPA certificate has been issued. It is expected that any such requests to the proponent, from MassDOT, would be identified in either the Completeness Review or the 25% Design Review stages.

(11) Denial of a Permit Application. The District Highway Director may place restrictions in, or deny, the issuance of a Permit if any of the following exists: the Applicant fails to meet any of the requirement of the Permits; the Applicant fails to pay any costs or fees due pursuant to 700 CMR 13.00; the Applicant has outstanding payments due MassDOT, or its agents, on other Access Permits; the proposed entry does not provide sufficient highway improvements or its use has the potential to create a condition that will interfere with MassDOT maintenance, construction or operations; the construction and use of the proposed access would create a condition within the State Highway Layout or Right of Way that is unsafe that will interfere with the free flow of traffic or create an obstruction that endangers the public safety and welfare; the proposed access interferes with existing rights of third parties; the proposed access may block or limit sight lines on MassDOT roadways and Rights of Way; the proposed access violates MassDOT policies, procedures, directives, rules and regulations; the Applicant has a history of failing to meet permit conditions and quickly resolving safety and traffic-related issues; and/or the proposed entry or use, in MassDOT's sole discretion, constitutes an impermissible use of MassDOT Property. In the case of a Drainage Tie in application, MassDOT may deny a Permit where its use has the potential to adversely affect the integrity and/or capacity of the drainage system, or cause unacceptable contaminant loading, or where a practicable drainage alternative exists. Under M.G.L. c. 81, § 21, the Board or Department in a municipality with authority over

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public roadways may notify MassDOT by registered mail of its objection to a proposed new or modified residential or commercial driveway intersecting the State Highway Layout. If MassDOT agrees with the objection, which must be based on traffic safety concerns, MassDOT shall not grant the Permit.

(12) Access Permit Sign-off. Once work is completed, the Grantee is responsible for notifying MassDOT to arrange a final inspection for sign-off on their permit. The official sign-off on the Permit will be issued once the work performed is verified to be in compliance with the Permit conditions and to the satisfaction of the Department. If upon inspection the work is not considered complete the Grantee will be provided a punch list outlining deficiencies for their correction. Re-inspection will take place upon subsequent grantee notification to the Department. Failure to address deficiencies after the first re-inspection may result in the Department seeking reimbursement for labor and equipment required for future inspection services. Grantees are responsible for future roadway failures resulting from their work until such time that MassDOT resurfaces the road or another grantee performs work in the same location.

13.04: Criteria for Review of Applications

(1) Review of Engineering Plans. The District Highway Director shall require that engineering plans and specifications provide for safe and efficient access, which protects the operational integrity of the MassDOT roadway or property. Plan review and approval shall be based on the standards in the most recent Manual on Uniform Traffic Control Devices (MUTCD), including the most recent Massachusetts Amendments, MassDOT's Project Development and Design Guide or its successor, MassDOT's Standard Specifications for Highways and Bridges, and any then current technical policies or engineering directives, or other manuals and design guides issued by MassDOT. For Drainage Tie-in applications, all plans and documents shall follow MassDOT's Drainage Tie-in Standard Operating Procedures, as may be amended from time to time.

(2) Permit Conditions. The District Highway Director shall condition a Permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, to address aesthetic considerations, and to avoid or minimize environmental damage during the construction period and throughout the term of the Permit. Such conditions may include, but not be limited to:

- (a) Necessary limitations on turning movements;
- (b) Necessary measures to ensure the safety of pedestrians, motorists, and those engaged in the Project, work or activity contemplated under the Permit;
- (c) Restrictions on or requirements for the number and configuration of access points to serve the land parcel;
- (d) Vehicle trip reduction techniques to be implemented for the development;
- (e) Necessary and reasonable efforts to maintain existing levels of service;
- (f) Design and construction of necessary highway improvements by the Permittee;
- (g) Prescribed restoration measures to ensure the roadway, pavement markings, shoulder, traffic control devices, signs, guardrail, and all impacted highway devices and appurtenances are returned to a condition better or equal to the condition prior to commencement of the permitted work.
- (h) Reimbursement by the Permittee of costs of MassDOT inspection of highway improvement work;
- (i) The requirements of the Section 61 Finding of MassDOT, including the implementation of Transportation Demand Management measures and Transportation Monitoring Program, where applicable; and
- (j) The requirements of the UAP, where applicable.

13.04: continued

(3) Design Exceptions. MassDOT recognizes certain design criteria that, if not met, require formal approval of design exceptions. These criteria are listed in the Massachusetts Department of Transportation Project Development and Design Guide and in MassDOT Engineering Directive E-14-006, as may be amended from time to time. Sufficient documentation of design exceptions is required to demonstrate that sound engineering judgment was used to design the improvements. Documentation shall be prepared in accordance with the MassDOT Project Development and Design Guide and the most current guidance available by MassDOT, and shall be signed by a Professional Engineer registered in the Commonwealth of Massachusetts. All design exceptions must be approved by the Chief Engineer. In addition, any proposed work that does not meet the pedestrian and bicycle accommodation requirements of the MassDOT Healthy Transportation Policy Directive, as detailed in MassDOT Engineering Directive E-14-006, must be approved by the Secretary of Transportation. If a design exception is sought as part of a Permit, an additional 20 business days beyond the time allowed in 700 CMR 13.03(5) shall be provided for review of the submission.

In addition to exceptions from design criteria, any exceptions to full compliance with 521 CMR: *Architectural Access Board*, must also be identified in the Access Permit. The Applicant is responsible for obtaining all necessary variances and approval of design plans and constructed elements from the local access board. MassDOT shall not issue any Permit that is not in compliance with 521 CMR and the MassDOT Healthy Transportation Policy Directive, where applicable.

(4) Review of Related Projects. Permit applications shall be reviewed in the context of the section(s) of state highway that is (are) affected by traffic to be generated by a Project for which a Permit is sought. Whenever practical, the District Highway Director shall coordinate review and issuance of Permits for multiple Projects in proximity to each other in order to facilitate safe and efficient traffic operations and to avoid or minimize adverse environmental impacts. In cases where a proposed access is to be shared by multiple development sites, the Applicant(s) shall provide evidence of the rights of access between the parties involved prior to the issuance of the Access Permit. In these cases, an Access Permit shall be issued for each development site under separate ownership.

(5) Section 61 Finding. For all Projects that receive EEA certification of a Final EIR, which was scoped for a MassDOT Access Permit, MassDOT will issue a Section 61 Finding at the Applicant's request within 25 business days for Category II Projects or 40 business days for Category III Projects. The Section 61 Finding shall indicate that MassDOT has completed its review of the Project in the context of MEPA and that the proposed land use is approved by MassDOT subject to the conditions outlined in the Finding. Phased Section 61 Findings may be required under an approved phase-waiver certification issued by the Secretary of EEA. The Finding shall be incorporated by reference into any Permit to be issued by MassDOT for the Project. The requirement to issue a Section 61 Finding and a Permit does not preclude the issuance of a Temporary Access Permit under 700 CMR 13.05(2). The Section 61 Finding will specify the driveway access and off-site mitigation measures necessary for initial occupancy of the Project. Additional mitigation measures, if any, and the construction timing of these additional measures may also be specified in the Section 61 Finding. Plan review of the measures not required for initial occupancy shall not delay the issuance of the Permit for the Project for this initial occupancy.

(6) Other Design Features and Considerations. In accordance with 700 CMR 13.04(4), MassDOT may require the Applicant to include design and development features that are in keeping with GreenDOT goals and Climate Change Mitigation and Resiliency Measures; where deemed suitable/practicable given the context of the project and surrounding development and roadway features. Examples include, but are not limited to, a compliment of electric vehicle charging stations, bike racks, sidewalks and multiuse paths, bus shelter(s), employee transit service, and design features to reduce impact of climate change.

13.05: Access Permit Provisions(1) Duration of Permits.

(a) Construction. Construction of the proposed Project, work, or activity within the State Highway Layout under the terms of a Permit must be completed within one year of the date of issue, unless otherwise stated in the Permit. The District Highway Director may extend the Permit by an additional one year up to a maximum of five years from the issuance of the original Permit, upon written request of the Applicant or Permittee, provided said request is filed prior to the expiration of the original Permit. Extension requests beyond an expiration date may require a new Permit application and associated fee. The decision to extend or issue a new Permit will be based, in part, on the lapse of time, project location, subsequent changes in MassDOT-highway standards, specifications, policies, practices and regulations and will be at the sole discretion of the District Highway Director.

(b) Use. Permits upon issuance shall allow ingress to the property served and egress to the MassDOT property for an indefinite period, but a new Permit shall be required when:

1. More than one year has lapsed between the date of issuance of a Permit, and the start of construction or the use of facility, unless an extension has been granted pursuant to 700 CMR 13.05(1)(a);
2. Constructing, reconstructing, maintaining, replacing, relocating, repairing, improving or expanding an existing facility on the property served, which results in a Substantial Increase in or Impact on Traffic, or drainage (*e.g.*, parking lot expansion), on the State Highway Layout or other MassDOT property;
3. Constructing a new access or modifying an existing permitted access;
4. A Drainage Tie-in discharge to MassDOT's system is deemed by the District Highway Director to cause or contribute to the impairment of a receiving water body; or
5. When a Permit would otherwise be required based on 700 CMR 13.00.
6. Noncompliance with the Section 61 Findings requirement, including the Transportation Demand Management measures and the project Transportation Monitoring Program.
7. A new access permit application and fee will be required if the applicant has not acted in good faith or otherwise demonstrated progress through the design process within two years of the original application submission.

(2) Temporary Access for Site Construction and Related Activities. Upon receipt of an application, the District Highway Director may grant an Access Permit for temporary site access for the purpose of performing site construction, land surveying, land clearing, Project preparation, and related activities. The Access Permits shall specify an expiration date, which shall not exceed one year from the date of issuance. Temporary access shall not allow building occupancy or use of the driveway(s) by the public. Temporary access may be issued for construction and related activities that precede a Project that requires the filing with the Secretary of EEA under MEPA for a MassDOT Access Permit, provided the site access, construction, or use in and of itself does not exceed any MEPA thresholds. The issuance of an Access Permit on a temporary basis shall in no way be construed as an indication that an Access Permit for a residential or commercial driveway for the site will be granted. Permits issued for temporary access will follow the same fee structure as permanent residential or commercial drives. Fees for permanent drives stemming from a Temporary drive will be waived, provided there are no design changes and they meet the provisions of 700 CMR 13.05(1)(b) and no more than one year has lapsed since the expiration of permit issued for temporary access.

(3) Construction Under a Permit. Construction under a Permit may commence upon 48 hours written notice (which may be delivered by facsimile or electronic mail) or logged telephone notice to the District Highway Director or his or her designee by the Permittee.

(4) Suspension or Revocation of Permit. When the District Highway Director determines that a violation of M.G.L. c. 81, § 21 or M.G.L. c. 85, § 2 has occurred, or that a Permit condition has not been complied with, the Permit may be suspended or revoked.

13.05: continued

(a) Suspension.

1. Emergency Suspension. The District Highway Director, in their sole discretion, may immediately suspend any work performed under a Permit in the event of an emergency or unsafe condition. In the case of an emergency condition or imminently unsafe travel conditions within the State Highway Layout that is due to noncompliance with conditions of a Permit, the District Highway Director or his or her designee may issue a verbal emergency suspension of a Permit to a Permittee. Upon issuance of this verbal suspension, the Permittee shall stop the subject work immediately. If the condition is not rectified within 24 hours, the District Highway Director will notify the Permittee, in writing by hand delivery or by certified mail, an emergency order immediately suspending the Permit and outlining the reason(s) for the suspension and the steps that shall be taken by the Permittee in order to allow said suspension to be lifted.

2. Standard Suspension. The District Highway Director will notify the Permittee in writing by certified mail a minimum of 24 hours in advance of the effective suspension of the Permit outlining the reason(s) for the suspension and the steps that shall be taken by the Permittee in order to avoid or lift said suspension.

(b) Revocation. The District Highway Director will notify the Permittee in writing by certified mail of the intent to revoke a Permit outlining the reason(s) for such intended revocation, the steps that shall be taken by the Permittee to avoid such revocation, and establishing a date, time, and place for a hearing, prior to revocation, as provided by M.G.L. c. 30A, § 13. Prior to establishing a revocation hearing, the District Highway Director shall notify the Chief Engineer and send a copy to the General Counsel's Office.

(5) Enforcement. MassDOT may issue written orders to enforce the provisions of M.G.L. c. 81, § 21, or the provisions of any Permit, order, or approval issued under M.G.L. c. 81, § 21. Any Person who violates any provision of 700 CMR 13.00 shall be punished in accordance with M.G.L. c. 81, § 21.

(6) Performance Bonds and Insurance. The District Highway Director may require a performance bond to be posted by the Applicant for the estimated cost of the construction within the State Highway Layout and possible damages. The limits of said bond shall be in accordance with M.G.L. c. 81, § 21. The performance bond shall be posted by the Applicant prior to the issuance of the Permit. The District Highway Director may also require the Permittee to purchase insurance. The type and limits of said insurance shall be determined by the District Highway Director.

(7) Administrative Appeals. An Applicant who is aggrieved by the issuance, denial, modification, suspension, or revocation of a Vehicular Access Permit may appeal in writing to the Chief Engineer. Upon consultation with the Permit Applicant and appropriate MassDOT personnel, and after a hearing under the provisions of M.G.L. c. 30A, § 13, if required, the Chief Engineer may uphold, modify, or overturn the action or decision of the District Highway Director.

(8) Issuance of a License or Easement. If MassDOT determines that the proposed entry or use is intended for sustained types of uses or occupancy, MassDOT may grant a License or easement in lieu of or in addition to issuance of a Permit. The Director of the Office of Real Estate and Asset Development shall be responsible for issuance of Licenses and easements. The License or easement shall limit the entry upon and use of the designated property to those purposes specified in the License or easement and shall include any other requirements that MassDOT in its sole discretion deems necessary to protect the interests of MassDOT.

(9) Filming and Photography Permits. If the Permit application indicates that the proposed entry or use is to accommodate a professional production and/or film organization's request to film, videotape or photograph for commercial purposes, MassDOT may issue a Filming and Photography Permit.

13.06: Permit Fees

- (1) Fees and Costs. MassDOT may charge fees to cover costs typically incurred in processing, reviewing and accommodating requests to enter upon or use MassDOT property:
- (a) Application Fee. An Applicant shall pay the fee as indicated on the Permit application.
  - (b) Maintenance and Equipment Fee. MassDOT may charge a fee based on the actual cost of maintenance and equipment costs incurred to review the application or provide oversight and site inspection during the post-issue and sign-off process.
  - (c) Engineering Costs. MassDOT may charge a fee based on the actual costs of the technical and engineering review of detailed drawings and specifications.
  - (d) State Police Details. The Applicant or their designee shall be responsible for the costs and fees associated with required State Police details and shall be responsible for the ordering of such police details.
  - (e) Event and Filming and Photography Fees. MassDOT may charge fees to cover the actual costs incurred in addition to those covered by other applicable fees to accommodate requests for events and requests to film, videotape or photograph on MassDOT property.
  - (f) BMP inspection Fee. MassDOT may charge a fee to cover the costs for the inspection of stormwater BMPs upstream of a Drainage Tie-in.
  - (g) Tree Removal/Trimming Mitigation. Where an applicant proposes to perform tree trimming or removal for an approved purpose, MassDOT may require the applicant to reimburse the Agency for the value of the vegetation removed.
  - (h) MassDOT will consider requests for expedited reviews when they have the capacity to accommodate such requests, and in accommodating such requests, existing applications are not unduly delayed at the expense of fulfilling the request. MassDOT may impose additional fees when an applicant requests an expedited review. The assessed fee will be commensurate with the original permit fee and the design stage being expedited – 25% Review (20% of original fee), 75/100% (15% of original fee), PS&E (15% of original fee). Expedited reviews will be completed in half the time provided under 700 CMR 13.03. The fee will be assessed upon MassDOT's completion of the review within the given time period. Advancement or issuance of the permit will not commence until payment has been submitted by the applicant.
  - (i) Other Fees and Costs. For unique requests or exceptional uses of MassDOT property, MassDOT may charge specialized fees and costs in addition to, or in *lieu* of, any or all of the above items based on specific circumstances or to recoup the anticipated costs to be incurred by MassDOT.
- (2) In accordance with M.G.L. c. 21, §17C, no charges or fees shall be imposed by MassDOT for Recreational Use Permits as defined in 700 CMR 7.13(1)(c).
- (3) Requests for discounts or waiver of fees and costs may be considered and reviewed by MassDOT for; nonprofit organizations, community groups, municipalities, students, or others similar entities deemed eligible, based on demonstrated need.
- (4) Applicable fees and costs shall be estimated by MassDOT and paid by the Applicant prior to issuance of a Permit. Nonpayment of applicable fees and costs will be considered a basis for denial of the request.
- (5) If an applicant requests an amendment to an issued permit and additional scope is proposed, the District may determine that a new application is required with a new assessed fee. The District may also determine that an amendment can be issued but an additional fee will be assessed based on the additional work requested. This would be a case where the original fee was based on the size of development, or length of trench, number of utility poles, as examples.

700 CMR: DEPARTMENT OF TRANSPORTATION

13.06: continued

(6) All fees and costs referenced in 700 CMR 13.06 are subject to change.

<b>Application Fees</b>	
Permit Amendments:	\$200.00
Permit Extensions:	
If requested prior to permit expiration	\$75.00
If requested after permit expiration	\$150.00
Accident Recovery Permits:	\$150.00
Borings, Monitoring Wells, Exploratory Pits:	
If all contained within the soft shoulder	\$375.00
If any portion within paved surfaces	\$500.00
Building Moves-oversized Loads:	
Moves requiring MassDOT oversight may require a separate cost-recovery process.	\$200.00
Drainage Tie-ins:	
Includes direct system connections and sheet flow entering the State Highway Layout.	\$1,500.00
Residential Drives/Curb-cuts (per unit):	\$75.00
Commercial Drives-Curb Cuts (Includes Indirect Access Permits):	
Building square footage less than 50,000 s.f.	\$750.00
Buildings greater than 50,000 s.f.	\$750.00 + \$0.020/s.f. above 50,000 s.f.
Fuel Spills/Hazardous Releases:	
This fee applies to the permit issued to perform clean-up activities and site remediation for a specific incident.	\$750.00
A separate permit and fee is required for annual "blanket" Emergency Access.	
Landscape Activities/Tree Trimming/Removal:	
Any work performed under this category may require mitigation for vegetation loss, value set by a MassDOT Landscape Architect.	\$750.00
Annual Emergency Response and Limited General Maintenance Permit (Municipal):	\$1,000.00
Miscellaneous Access Permits:	
This category includes unique, benign, requests for highway access not fitting other categories such as murals, small unmanned aircraft (Drone), filming activities, photography, <i>etc.</i> Provisions under 700 CMR 13.06(1) and 700 CMR 13.06(3) may be exercised.	\$500.00

\* Note that mix-use drives/streets fees will be assessed by the number of proposed residential units plus the square footage of commercial development.

13.06: continued

<b>Application Fees</b>	
<p>Small Wireless Facilities and New Small Cell Structure Licensing:</p> <p>(1) <u>Nonrefundable Application Fees.</u></p> <p>(a) License Application seeking to install five or fewer Small Wireless Facilities \$500.00</p> <p>(b) License Application seeking to install more than five Small Wireless Facilities \$500.00, plus \$100.00 for each additional Small Cell structure \$1000.00 per structure</p> <p>(c) License Application seeking to install a new Structure</p> <p>(2) <u>Annual Fees.</u></p> <p>(a) Small Wireless Facility on MassDOT-owned Structures \$270.00 annually</p> <p>(b) Small Wireless Facility on Structures owned by a third-party or the Licensee \$100.00 per annum</p>	
<p>Staging of Equipment:</p> <p>Staging of equipment or access to highway for non-MassDOT Construction/. Maintenance projects may require a separate lease Agreement with OREAD</p>	\$750.00
<p>Survey Activities:</p> <p>Not in connection with MassDOT design or maintenance activities.</p>	\$250/site
<p>Traffic Control Devices:</p> <p>This allows for the placement of traffic control devices on MassDOT roadways that are not in conjunction with a permit or MassDOT contracted work.</p>	\$375.00
<p>Utility: Service Connections:</p> <p>Residential \$175.00</p> <p>Commercial \$375.00</p>	
<p>Utility: Improvements/Upgrades to Underground Facilities:</p> <p>Projects under 2000 feet in length \$1,500.00</p> <p>Projects over 2000 feet \$1,500</p> <p>Certain underground projects may require a separate lease/easement agreement with OREAD. + \$0.50/lf above 2000 feet</p>	
<p>Utility: Overhead Capital Improvements:</p> <p>Complex overhead work and aerial crossings requiring MassDOT oversight may require a separate cost-recovery process.</p>	\$1,000.00
<p>Utilities/Communication Equip. Attached to MassDOT Structures/Facilities other than Small Wireless Facilities:</p> <p>Certain applications may require a separate lease agreement with OREAD. MassDOT may seek cost recovery under provision 700 CMR 13.06(1). For requests requiring unique or detailed reviews.</p>	\$1,500.00
<p>Utility Pole Installations/Replacements, other than poles installed by Small Wireless Facility Permit holders solely to support Small Wireless Facilities:</p> <p>Up to ten utility poles \$750.00</p> <p>In excess of ten poles \$750.00 + \$50/pole</p>	
<p>Utility Other:</p> <p>Work not defined in another fee category. Provisions under 700 CMR 13.06(1) may be exercised.</p>	\$500.00
<p>Way-finding Signs for Events of significance:</p> <p>This category covers static signs requested to display parking and travel information to motorists about significant events.</p>	\$750 + \$0.25/s.f./day
<p>Way-finding Signs for Annual Events with no significant changes from previous year's submission. <i>This category includes the installation of supplemental service signs.</i></p>	\$375 + \$0.25/s.f./day

13.07: Miscellaneous

- (1) Transition. Any Permit application or submission as part of a Permit application shall be governed under the procedures in effect at the time of submission.
- (2) Severability. The provisions of 700 CMR 13.00 shall be deemed severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

REGULATORY AUTHORITY

700 CMR 13.00: M.G.L. c. 6C, § 2.