

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

M.G.L. CHAPTER 40, SECTION 54A **APPLICATION GUIDANCE**

MASSACHUSETTS GENERAL LAW, CHAPTER 40 **POWERS AND DUTIES OF CITIES AND TOWNS**

SECTION 54A

STATE CONSENT TO ISSUANCE OF PERMITS TO BUILD ON LANDS FORMERLY USED AS RAILROAD RIGHT-OF-WAY; DAMAGES IN ABSENCE THEREOF

STATUTE, PROCESS and APPLICATION

***Note:** When applying for consent to the issuance of a building permit, please note that the process for M.G.L. Chapter 40, Section 54A may require a public hearing with notice in a local paper. The entire process usually takes about ten to fourteen weeks from receipt of a completed application to the issuance of a determination as to applicability of the statute and/or consent to the issuance of a building permit or permits for the proposed construction. For more information, contact the Rail and Transit Division of the Massachusetts Department of Transportation at 54A-161C@dot.state.ma.us.*

If a city or town or any other person purchases any former railroad right-of-way in the Commonwealth, no permit to build a structure of any kind on land so purchased shall be issued by any city or town in the Commonwealth without first obtaining the consent, or a determination of inapplicability, in writing to the issuance of such permit from the Secretary of the Massachusetts Department of Transportation (MassDOT). MassDOT is required to establish an application process, applicable timeframes and review guidelines that may require a public hearing component depending on when the former railroad right-of-way was last used by the railroad. As used in Section 54A, the term "former railroad right-of-way" shall mean any property either formerly owned in fee by a railroad company and used as a railroad right-of-way or portion of any property formerly subject to an easement held by a railroad company and used as a railroad right-of-way. If the Secretary of Transportation does not consent to the issuance of such permit, the owner of the land may recover from the Commonwealth such damages as would be awarded under the provisions of M.G.L. Chapter seventy-nine.

Notwithstanding the provisions of the last sentence of the foregoing paragraph, there shall be no recovery from the Commonwealth in damages under said sentence by an owner of such land purchased after January 1, 1976.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

CHAPTER 40 SECTION 54A

STATEMENT OF PROCEDURES

1. General

All requests for consent or determination of inapplicability under Chapter 40, Section 54A must be submitted to the Massachusetts Department of Transportation (“MassDOT”), along with a copy of any letter issued by a City / Town building inspector or other appropriate City/Town official regarding any building permit application action requested in connection with M.G.L. Chapter 40, Section 54A (the “Statute”).

Please refer to the M.G.L. Chapter 40, Section 54A Application, and associated “Required Attachments”.

All requests should be addressed to:

Monica Tibbits-Nutt
Secretary and Chief Executive Officer
Massachusetts Department of Transportation
10 Park Plaza, Suite 4160
Boston, MA 02116-3969

A digital copy of the Applicant’s request and related Application materials should be sent to:

54A-161C@dot.state.ma.us

2. Application Materials

Applicants must submit a completed Application, along with “Required Attachments” referenced in the Application. All requests should be accompanied by a cover letter from the Applicant, with a brief description of the property (hereinafter referred to as the “Project Parcel”), any current or previous railroad ownership and/or uses, the scope of the proposed project, and specifics as to the action requested in connection with the Statute (i.e., consent to issuance of a building permit or determination of inapplicability).

If the Applicant requests the Secretary's Consent to the issuance of a building permit, Applicant must include a letter from the Building Inspector or other appropriate City/Town official requesting consent to the issuance of a building permit or permits for the proposed construction. (See attached sample letter from Building Inspector). Requests and Applications for the Secretary's Consent should not be made at the master planning stage.

If the Applicant seeks MassDOT's determination that the Statute does not apply, Applicant shall document title to the project parcel back to the year 1900. Applicant's will not be required to provide title prior to 1900 unless there is evidence that a portion of the project parcel was previously used for railroad purposes, and that a railroad had a property interest in the Project Parcel.

Applications Materials:

- A cover letter from Applicant, along with a copy of any letter issued by City/Town Building Inspector or other appropriate City/Town Official regarding the building permit application action requested in connection with the Statute.
- Plan or plans identifying property lines and any proposed new construction on land currently or formerly owned by a railroad, or on which a railroad has or formerly held an easement for railroad purposes. Plans must:
 - (a) identify the property comprising the project parcel and any former railroad property;
 - (b) include title block and scale;
 - (c) identify the distance to any existing railroad line or transportation corridor; and
 - (d) be the same plans as have been delivered to the City/Town Building Inspector.
- A copy of a signed recorded property deed into the current owner, with corresponding plan(s).
- A copy of a signed recorded property deed out from the former railroad owner, with corresponding plan(s).
- A copy of signed recorded easement documenting easement rights held or formerly held by any railroad.
- A copy of signed recorded release or termination of any easement previously established.

- A plan (or plans) showing the Project Parcel on which any new construction will take place, and where any existing improvement is situated within or encroaches upon the former railroad right-of-way, clearly identifying:
 - (a) location of proposed new structure(s);
 - (b) location of any existing structures, including any structures which encroach on former railroad property;
 - (c) current and former railroad property line or easement area boundaries;
 - (d) dimensions from existing and proposed structures and site utilities to an adjacent railroad right-of-way or other transportation corridor; and
 - (e) dimensions from existing and proposed structures and site utilities to any track facilities.
- Elevations demonstrating the height of structures and facilities in the vicinity of any railroad right-of-way.
- A map (locus) of the city, town or surrounding area, showing the location of the Project Parcel.
- Additional deeds and plans that may be relevant to MassDOT's review.

NOTE: All plans must be legible and at an adequate scale to enable review of dimensions and text.

3. Review for Completeness

MassDOT will review the completed application package and notify Applicant if additional materials or information are required for completeness or recommended for clarity. In the event that Applicant does not provide the requested material and/or information within thirty (30) days of MassDOT's request, MassDOT will deem the Application to be "inactive", until such time as the requested material and/or information is provided and Applicant requests that MassDOT continue its review.

4. Determination of Applicability

MassDOT will review the application materials and make an initial determination as to whether the Statute applies to the Project Parcel.

In the event that MassDOT determines the Statute does not apply to the Project Parcel, MassDOT will issue a letter regarding such determination to the Applicant and the building inspector.

In the event that MassDOT determines the Statute does apply to the Project Parcel and/or is unable to clearly determine that the statute does not apply, MassDOT will carry out its review of the proposed project in order to inform the Secretary's decision with respect to consent to the issuance of a building permit or permits for the project.

5. Public Hearing

Pursuant to M.G.L. Chapter 40, Section 54A, a public hearing regarding the proposed project and construction may be required. If a public hearing is required, MassDOT will contact the Applicant as soon as practicable to schedule a date for the hearing.

If a public hearing is required, the Applicant must advertise a public hearing notice in a local newspaper. **The Applicant is responsible for advertising the hearing in a local newspaper at least twenty-one (21) days prior to the hearing date.**

Please Note: MassDOT requires a copy of the advertisement tear sheet prior to the scheduled hearing. (See attached sample hearing notice.)

MassDOT will hold public hearings as a vital component of the M.G.L. c. 40, Section 54A review process, whenever they are deemed essential to serving the public interest. The responsibility of demonstrating the essential nature of a hearing to the public interest lies with the municipality, which is the party requesting the Secretary's consent for the issuance of a building permit.

6. Application Review of Proposed Project; Potential Transportation Impacts

MassDOT will review the completed application package and may request that other public agencies also review the application for transportation-related impacts. This review process typically takes at least 2 weeks and no more than 6 weeks, unless the proposed project or related circumstances are unusually complex.

Applicants proposing transit-oriented development or other construction within the MBTA's "zone of influence" (30 feet from the proposed development work zone to the MBTA or MassDOT property line) are encouraged to review the MBTA Manual "Design/Construction Review for projects within the MBTA's "Zone of Influence prior to submitting their Chapter 40, Section 54A Application.

7. Secretary's Consent to the Issuance of a Building Permit or Permits

After the conclusion of the review process, including a public hearing (if required), MassDOT will review all comments submitted and issue a letter to the Applicant and the Building Inspector stating the Secretary's decision with respect to consent to the issuance of a building permit or permits for the Project Parcel and proposed project.

SAMPLE

M.G.L. CHAPTER 40, SECTION 54A BUILDING INSPECTOR LETTER TO MASSDOT

NOTE: *THIS LETTER SHOULD BE SENT ON CITY/TOWN LETTERHEAD AND SIGNED BY THE BUILDING INSPECTOR OR OTHER APPROPRIATE CITY/TOWN OFFICIAL.*

(DATE)

Monica Tibbits-Nutt
Secretary and Chief Executive Officer
Massachusetts Department of Transportation
Ten Park Plaza, Suite 4160
Boston, Massachusetts 02116-3969

Attn: Rail and Transit Division

Dear Secretary Tibbits-Nutt:

[NAME OF APPLICANT] has requested a permit to build [DESCRIPTION OF PROPOSED PROJECT / CONSTRUCTION] on a parcel of land located in [CITY/TOWN], Massachusetts. The property for which the permit is requested is located at [ADDRESS OF PROPERTY].

In accordance with Massachusetts General Law, Chapter 40, Section 54A, no permit to build a structure of any kind on former railroad right-of-way shall be issued by any city or town in the Commonwealth without first obtaining the consent, or a determination of inapplicability, in writing to the issuance of such permit from the Secretary of the Massachusetts Department of Transportation (MassDOT).

I hereby request that MassDOT determine whether M.G.L. Chapter 40, Section 54A applies to the parcel and proposed project referenced above, and, if so, whether consent will be granted by MassDOT to the issuance of a building permit or permits for [NAME OF APPLICANT(S)] to construct the proposed project on the former railroad property referenced above.

Sincerely,

(BUILDING INSPECTOR'S SIGNATURE)

(PRINT NAME and TITLE)

SAMPLE

M.G.L. CHAPTER 40, SECTION 54A PUBLIC HEARING NOTICE

NOTE: *THE PUBLIC NOTICE TEAR SHEET FROM A LOCAL NEWSPAPER MUST BE SENT TO MASSDOT'S RAIL AND TRANSIT DIVISION PRIOR TO THE HEARING DATE AND A HARD COPY SHOULD BE PROVIDED PRIOR TO OR AT THE HEARING.*

[PROPERTY ADDRESS]

[MassDOT File Number]

Legal Notice
The Commonwealth of Massachusetts
Massachusetts Department of Transportation

Notice of Hearing

Pursuant to Massachusetts General Laws, Chapter 40 Section 54A, and upon the request of [NAME], the Building Inspector of [CITY/TOWN], Massachusetts, the Massachusetts Department of Transportation shall conduct a hearing to determine whether a building permit shall be issued to [APPLICANT(S) NAME] for [DESCRIPTION OF PROPOSED PROJECT / CONSTRUCTION] located at [ADDRESS], Massachusetts, on a parcel that [GENERAL DESCRIPTION OF PARCEL]. The parcel includes a portion of the former [NAME OF RAILROAD] railroad right-of-way.

The hearing will take place on [DATE] at [TIME] at the Massachusetts Department of Transportation, Ten Park Plaza, Suite 4160, Boston, MA 02116. All interested parties should attend. Inquiries regarding this hearing may be made to Massachusetts Department of Transportation – Rail and Transit Division, at 54A-161C@dot.state.ma.us.