

302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

302 CMR 11.00: PARKWAYS, TRAFFIC, AND PEDESTRIAN RULES

11.02: Definitions

11.06: Construction and Access Permits

11.02: Definitions

The following words and phrases, when used in 302 CMR 11.00, shall have the meanings respectively ascribed to them therein except in those instances where the context clearly indicates a different meaning or is otherwise stated.

Whenever any word and phrase used in 302 CMR 11.00 is not defined herein, such word or phrase shall be construed according to its generally accepted meaning as noted in a dictionary of general usage.

ADT means average daily traffic, which is the general unit of measure for traffic on a highway; it is the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period.

Boulevard means any roadway, parkway, way or any portion thereof, under the jurisdictional care, custody or control of DCR, between regularly established curb lines or that part, exclusive of shoulders, improved and intended to be open and used for vehicular traffic by the public on a public way, including vehicular and/or pedestrian, bicycle, or other DCR approved traffic.

DCR or the Department means the Massachusetts Department of Conservation and Recreation.

DCR Property means property, real or personal, in which the DCR has a legal interest including property under the care, custody, or control of the DCR. Such property may include, but is not limited to grassland, reservations, parks, forests, beaches, tidelands, pools, skating rinks, golf courses, campgrounds, rail trails, bike trails, forest roads, forest ways, ponds, lakes, parking areas, trailheads, parkways, boulevards, and roadways.

Driveway (see “boulevard,” “parkway” or “roadway” as defined herein).

EOEEA means Executive Office of Energy and Environmental Affairs.

Excavation means any digging or opening into the surface of DCR property.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. c.30, §§61-62I, and its implementing regulations at 301 CMR 11.00.

Parkway means any boulevard, roadway, way or any portion thereof, under the jurisdictional care, custody or control of DCR, between regularly established curb

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lines or that part, exclusive of shoulders, improved and intended to be open and used for vehicular traffic by the public on a public way, including vehicular and/or pedestrian, bicycle, or other DCR approved traffic.

Permit means a duly issued, written, fully revocable license from DCR authorizing a permittee to engage in uses or activities on DCR property that are otherwise prohibited, restricted, or regulated.

Person means any individual, corporation, firm, partnership, company, association, trust, or other business or non-profit organization; any agency, department, board, commission, quasi-public agency or authority of the Commonwealth; and any Federal, municipal, or regional governmental or intergovernmental agency, department, board, commission, authority, or other entity, or any combination of individuals or entities including but not limited to those listed above, their agent, trustee, executor, receiver, assignee, or other representative thereof.

Project means any work or activity undertaken by a Person.

Roadway means any boulevard, parkway, way or any portion thereof, under the jurisdictional care, custody or control of DCR, between regularly established curb lines or that part, exclusive of shoulders, improved and intended to be open and used for vehicular traffic by the public on a public way, including vehicular and/or pedestrian, bicycle, or other DCR approved traffic.

Section 61 Finding(s) means the findings issued by the Department pursuant to MEPA.

Substantial Increase in or Impact on Traffic means a Project that meets or exceeds any of the following thresholds: (a) generation of 2,000 or more new ADT on Parkways providing access to a single location; (b) generation of 1,000 or more new ADT on Parkways 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 DCR to generate a significant impact on traffic flow and safety. For the purposes of this definition, “new” means ADT or parking spaces generated by a Project above and beyond the ADT or parking spaces in existence as of the time of the Access Permit application.

Way means any public highway, private way laid out under authority of statute, dedicated to public use, or a way under the control of DCR and defined herein as “roadway,” “boulevard” or “parkway.”

11.06: Construction and Access Permits

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(1) General

- (a) No DCR parkway or other DCR property may be dug up or physically modified, nor opening made therein, for any purpose without a construction and access permit. In addition to the foregoing, a construction and access permit shall be required, prior to the commencement of work on a project, for (i) a change in use of an existing residential or commercial driveway onto a DCR parkway or other DCR property that results in a substantial increase in or impact on traffic over the current use; or (ii) construction of new, or change in use of an existing, residential or commercial driveway from properties that abut DCR parkways or other DCR property to serve a building or facility, or expansion of a building or facility, that generates a substantial increase in or impact on traffic over the current use.
- (b) No material may be dumped or placed on a DCR parkway or other DCR property. No tree may be planted or removed or obstruction or structure placed on a DCR parkway or other DCR property or removed therefrom or changed without a written construction and access permit from the Department.
- (c) Any and all work shall be conducted according to the construction and access permit terms and conditions, to the satisfaction of the Department. The entire expense of replacing and resurfacing the parkway or other DCR property at the same level and in as good condition as before the permitted work shall be borne by the permittee. All work must be performed in accordance with applicable statutes, regulations, codes or standards.
- (d) In the case of a driveway opening on a parkway, or a substantial increase in or impact on traffic, the Department may grant a construction and access permit for a driveway location or alteration only after it has been determined that there is no other means of access and egress available and that said proposed driveway is in conformance with generally accepted safety standards and any other requirements set forth in the construction and access permit, or required during the construction and access permit application process.
- (e) Transition Provision. Any project or phase thereof that meets any of the following criteria shall not be governed by these regulations but shall be governed by the regulations and procedures in effect prior to the effective date of these regulations: 1) the proponent of the project has filed with the Secretary of the Executive Office of Energy and Environmental Affairs prior to the effective date of these regulations a

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draft environmental impact report, single environmental impact report, or notice of project change following the filing of a draft environmental impact report or single environmental impact report, or 2) the proponent has received prior to the effective date of these regulations a variance, special permit, comprehensive permit, a certificate of occupancy, or building permit, provided that such building permit is followed within five years thereafter by a certificate of occupancy. A project or phase thereof shall not lose eligibility for this transition provision if the proponent makes modifications that reduce the size, scope, or impact of the project or phase thereof after the effective date of these regulations.

(2) Application Processing

- (a) Submission of application. An applicant shall request issuance of a construction and access permit on a current, standard form used by DCR and shall include all support material required on the application form, plus any additional support material deemed necessary by DCR. The application shall be filed with DCR.
- (b) Completeness pre-review. Any materials submitted for DCR review as part of a construction and access permit application will be date-stamped by the Department upon receipt. Upon receipt, DCR shall review the contents of the application to determine if any materials necessary to conduct a detailed review are missing. DCR shall notify the applicant of any missing documentation within ten business days from the stamped date or the application will be considered complete. The pre-review process shall be followed until the DCR determines that the application contains all of the material necessary to conduct a detailed review.
- (c) Completeness of application. A construction and access permit application shall be determined to be complete once the following items have been received and determined to be in a format acceptable to conduct a detailed review:
 - 1. A completed DCR construction and access permit application form with all requested information supplied;
 - 2. All supporting data as listed on the application form;
 - 3. Evidence of EOEEA certification of compliance with MEPA, if applicable, including evidence of receipt of a waiver of or otherwise having completed MEPA for a portion of the project;

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4. Copies of all permits or similar documents related to the project including, without limitation, orders of conditions, local building permits, permits from the Army Corps of Engineers, proof of notice to DigSafe;
 5. Engineering plans in a format acceptable to DCR to conduct a detailed review where work within a DCR parkway or other DCR property is required;
 6. Traffic management plan (for all projects which impact vehicle, bike or pedestrian traffic on parkways, bike paths, sidewalks or parking areas);
 7. Pedestrian and vehicle plan;
 8. Applicable specifications and standards from Manual on Uniform Traffic Control Devices (MUTCD);
 9. Digital photos of project area's existing conditions;
 10. copy of the section of the USGS quadrangle map, clearly marking the project location;
 11. Complete set of plans or drawings for the project that triggers the DCR permit;
 12. Any other documentation requested by DCR as necessary to facilitate a review of the proposed work; and
 13. A check or money order payable to the Commonwealth of Massachusetts for the administration application fee in the amount required by the Secretary of Administration and Finance in 801 CMR 4.02.
- (d) Required Signatures for Construction and Access Permit Applications. The applicant must provide DCR with evidence certifying the consent to the application by the property owner(s), as required by DCR on the construction and access permit application form. If an agent is representing an applicant, the application shall include a notarized letter from the applicant outlining the specific duties and responsibilities of the agent. Where work is proposed on a municipal utility, the utility department for the municipality must sign the application as the applicant.

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- (e) Construction and Access Permit Issuance. Once the construction and access permit application is deemed complete, DCR shall, within a reasonable time, issue either the associated construction and access permit or a decision indicating that a permit will not be issued. Issuance of a construction and access permit will only occur subsequent to receipt of a letter from the Massachusetts Historical Commission (MHC) indicating compliance with M.G.L. c. 9 §§ 26 through 27C; or 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) pursuant to MEPA. The construction and access permit shall become effective upon issuance, subject to 302 CMR 11.06(4)(b)1.
- (f) Coordination with MEPA Review. For projects requiring MEPA review, DCR will comment to the Secretary of EOEEA and communicate with project proponents during the MEPA process in order to identify the project-related impacts to any DCR parkway or other DCR property and appropriate mitigation as early as possible. Resolution of traffic mitigation requirements through the MEPA process will minimize reconsideration of mitigation during the DCR Section 61 findings and construction and access permit process. In order to minimize damage to the environment caused by transportation-related air pollution, including greenhouse gas emissions, DCR shall, in cooperation with the Secretary of EOEEA, 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 findings 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. DCR coordination with MEPA review will reduce the total time required to obtain project approvals.
- (g) Denial of Construction and Access Permit Application. DCR may deny the issuance of a construction and access permit if the applicant fails to provide sufficient improvements to facilitate safe and efficient operations on a DCR parkway or other DCR property, or when the construction and use of the proposed access would create a condition within the DCR parkway or other DCR property that is unsafe, that will interfere with the free flow of traffic, that endangers the public safety and welfare, that is detrimental to DCR property, or that adversely impacts DCR property.

(3) Criteria for Review of Applications

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- (a) Review of Engineering Plans. The Department shall require that the engineering plans and specifications provide for safe and efficient access, which protects the operational integrity of the DCR parkway or other DCR 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, plus any other standards required by the Department.
- (b) Construction and Access Permit Conditions. The DCR shall condition a construction and access permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, to avoid or minimize damage to DCR property, and to avoid or minimize environmental damage during the construction period and throughout the term of the construction and access permit. Such conditions may include, but are not limited to:
1. Necessary limitations on turning movements;
 2. Necessary measures to ensure the safety of pedestrians, motorists, and those engaged in the project, work, or activity contemplated under the construction and access permit;
 3. Restrictions on or requirements for the number and configuration of access points to serve the land parcel;
 4. Vehicle trip reduction techniques to be implemented for the development;
 5. Necessary and reasonable efforts to maintain existing levels of service;
 6. Design and construction of necessary parkway improvements by the permittee;
 7. Reimbursement by the permittee of costs of DCR inspection of parkway improvement work;
 8. Measures to avoid, minimize, or mitigate the emission of transportation-related air pollution including greenhouse gases; and
 9. The requirements of the Section 61 findings of DCR, where applicable.

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- (c) Review of Related Projects. Construction and access permit applications shall be reviewed in the context of the section(s) of DCR parkways or other DCR property that is (are) affected by traffic to be generated by a project for which a construction and access permit is sought. Whenever practical, the DCR shall coordinate review and issuance of construction and access 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 construction and access permit. In these cases, a construction and access permit shall be issued for each project site under separate ownership.
 - (d) Section 61 Findings. For all projects that receive EOEEA certification of a Final Environmental Impact Report (EIR) which was scoped for a DCR construction and access permit, DCR will issue Section 61 findings at the applicant's request. The Section 61 findings shall indicate that DCR has completed its review of the project in the context of MEPA and that the proposed land use is approved by DCR subject to the conditions outlined in the Section 61 findings. The Section 61 findings shall be incorporated by reference into any construction and access permit to be issued by DCR for the project. The Section 61 findings 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 findings. Plan review of the measures not required for initial occupancy shall not delay the issuance of the construction and access permit for the project for this initial occupancy.
- (4) Construction and Access Permit Provisions
- (a) Duration of Construction and Access Permits
 - 1. Construction. Construction of the proposed project, work, or activity within or on a DCR parkway or other DCR property under the terms of a construction and access permit must be completed within one year of the effective date, provided, however, that DCR may extend the construction and access permit by an additional one year upon written request of the applicant or permittee, provided said request is filed prior to the expiration of the original construction and access permit.

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2. Use. Construction and access permits shall allow ingress and egress to and from the DCR Roadway or other DCR Property for an indefinite period, but a new construction and access permit shall be required when:
 - a. Constructing, reconstructing or expanding an existing facility on the property served, which results in a substantial increase in or impact on traffic on the DCR parkway or other DCR property;
 - b. Constructing a new access or modifying an existing permitted access; or
 - c. A construction and access permit would otherwise be required based on 302 CMR 11.00 or 12.00.

(b) Any Construction and Access Permit issued under 302 CMR 11.00 shall include the following provisions:

1. Construction Under a Construction and Access Permit. Construction under a duly issued construction and access permit may commence upon 72 hours written notice (which may be delivered by facsimile or electronic mail) or logged telephone notice by the permittee to the Department.
2. Prior to the commencement of any excavation work, the permittee must notify Dig Safe to obtain location of utilities. The permittee is charged with the responsibility of reviewing all applicable plans, site visits, and any other means available to ensure that the proposed excavation work will not adversely affect any subsurface utilities, equipment or structures, including trees and tree-root systems.
3. In the event an unanticipated site of archaeological or cultural significance is encountered during project implementation, project work shall be halted and DCR shall be notified.
4. If human remains are discovered during project implementation, the proponent shall halt work, secure the site, and notify the state police, the medical examiner, and the DCR staff archaeologist.
5. The permittee must agree to indemnify and hold DCR and the Commonwealth of Massachusetts harmless for all injuries to

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persons or property resulting or arising from the issuance of a construction and access permit. The permittee must warrant that all restorative work be in a safe and proper condition for a period of one year after work ceases, and agree that it shall indemnify and defend any suits arising from an unsafe or dangerous condition.

- (c) No action may be taken under a construction and access permit unless such construction and access permit has been issued in writing.
- (d) A construction and access permit is in the nature of a license. Acceptance of any construction and access permit is an acknowledgment of the permittee that the construction and access permit does not confer any rights in real property of the Commonwealth of Massachusetts.
- (e) Construction and access permits issued under 302 CMR 11.00 and the rights thereunder may not be assigned or otherwise transferred without the express written consent of the Department. Requests for such assignment must be made in writing to the Department.
- (f) Fees for construction and access permit applications are set forth in 801 CMR 4.02.
- (g) Suspension or Revocation of Construction and Access Permit. DCR may suspend or revoke a construction and access permit whenever it is determined to be in the best interest of the public, in accordance with the following provisions, upon a determination that the applicant has violated any of the provisions of the construction and access permit.

1. Suspension

- a. Emergency Suspension. In the case of an emergency condition, imminently unsafe travel conditions, or other exigent circumstances within or on a DCR parkway or other DCR property, the Department may notify the permittee, in writing by hand delivery or by certified mail, an emergency order immediately suspending the construction and access permit and outlining the reason(s) for the suspension.
- b. Standard Suspension. The Department will notify the permittee in writing by certified mail in advance of the effective suspension of the construction and access permit outlining the reason(s) for the suspension and

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the steps that shall be taken by the permittee in order to avoid or lift said suspension.

2. Revocation. The Department will notify the permittee in writing by certified mail of the intent to revoke a construction and access permit outlining the reason(s) for such intended revocation, and establishing a date, time, and place for a hearing, prior to revocation, as provided by M.G.L. c.30A §13.

(5) Enforcement

DCR may issue written orders to enforce the provisions of any construction and access permit, order, approval, suspension, revocation or Section 61 finding.

(6) Performance Bonds

DCR may reasonably require a performance bond to be posted by the applicant for the estimated cost of the construction within or on the DCR parkway or other DCR property, and possible damages. The performance bond shall be posted by the applicant prior to the issuance of the construction and access permit.

(7) Administrative Appeals

Any person aggrieved by a DCR decision under 302 CMR 11.00 may appeal the determination, under M.G.L. c. 30A, within 21 days of a construction and access permit's issuance or denial, in accordance with 801 CMR 1.00.

REGULATORY AUTHORITY

302 CMR 11.00: M.G.L. c. 92 §37; c. 132A §7