

**THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS HIGHWAY DEPARTMENT**

NOTICE OF A PUBLIC HEARING

A Public Hearing will be held by MassHighway to receive comments on the proposed Approval of Access to State Highways Regulations.

WHERE: Transportation Building
 Conference Room #5, 2nd Floor
 10 Park Plaza
 Boston, MA 02116

WHEN: Tuesday, August 28, 2007 10:00 AM

PURPOSE: The purpose of this hearing is to provide the public with the opportunity to become fully acquainted with the proposed Draft Approval of Access to State Highways Regulations. All views and comments made at the hearing will be reviewed and considered to the maximum extent possible.

PROPOSAL: The intent of this regulation is to govern, among other things, the review and issuance of state highway access permits that entitle use of sites of subject development projects, all construction within the SHLO, and all activities that may affect the safe operation of State Highways.

This regulation applies broadly to two types of permit applications to MassHighway:

(a) Vehicular access permits; and

(b) Non-vehicular access permits. See §§ 13.02(2) – (5).

Applications for vehicular access permits are intended to benefit from the expedited permit review features contained herein, §§ 13.03(5), (6), as well as to the procedures for administrative appeals, § 13.05(7), as the grant or denial of such permits may affect the rights of specific persons.

Written data, views, and arguments, in addition to, oral statements made at the Public Hearing regarding the proposed undertaking are to be submitted via mail to J. Lionel Lucien, P.E., Manager, Public/Private Development Unit, Executive Office of Transportation, 10 Park Plaza, Room 4150, Boston, MA 02116 or via email at Lionel.Lucien@EOT.state.ma.us. Such submissions will also be accepted at the hearing. The final date of receipt of these statements and exhibits for inclusion in the public hearing transcript will be ten (10) days after this Public Hearing. Copies of the proposed regulations are available on the MassHighway website at <http://www.mass.gov/mhd> or may be obtained by calling Lionel Lucien at (617) 973-7341.

Persons in need of ADA / Title II accommodations should contact Angela Rudikoff by phone at (617) 973-7005 or email angela.rudikoff@eot.state.ma.us. Requests must be made at least 10 days prior to the date of the public hearing.

In case of inclement weather, hearing cancellation announcements will be posted on the MassHighway website <http://www.mass.gov/mhd>.

LUISA PAIEWONSKY
COMMISSIONER

DAVID ANDERSON
ACTING CHIEF ENGINEER

Boston, Massachusetts

720 CMR: MASSACHUSETTS DEPARTMENT OF HIGHWAYS

720 CMR 13.00: APPROVAL OF ACCESS TO STATE HIGHWAYS

Section

13.01: Authority, Scope, and Objective

- (1) Authority
- (2) Scope and Intent
- (3) Determination of Need for an Access Permit

13.02: Definitions

- (1) Average Daily Traffic ("ADT")
- (2) Permit
- (3) Category I - Minor Vehicular Access Permits
- (4) Category II - Major Vehicular Access Permits
- (5) Category III - Complex Vehicular Access Permits
- (6) Non-vehicular Access Permits
- (7) MEPA
- (8) Person
- (9) Applicant
- (10) Owner
- (11) State Highway Layout
- (12) Substantial Increase in or Impact on Traffic
- (13) Project

13.03: Permit Application Processing

- (1) Submission of Application
- (2) Completeness Pre-Review
- (3) Completeness of Application
- (4) Required Signatures for Permit Applications
- (5) Time Limits for Detailed Application Review
- (6) Five -Day Permit Issuance Deadline
- (7) Recording of Permits
- (8) Coordination with MEPA Review
- (9) Denial of a Permit Application

13.04: Criteria for Review of Applications

- (1) Review of Engineering Plans
- (2) Permit Conditions
- (3) Design Exceptions
- (4) Review of Related Projects

June 28, 2007

720 CMR: Massachusetts Department of Highways

- (5) M.G.L. Chapter 30, Section 61 Finding
- 13.05: Access Permit Provisions
 - (1) Duration of Permits
 - (2) Temporary Access Permits for Site Construction and Related Activities
 - (3) Construction under a Permit
 - (4) Suspension or Revocation of Permit
 - (5) Enforcement
 - (6) Performance Bonds
 - (7) Administrative Appeals
- 13.06: Miscellaneous
 - (1) Transition
 - (2) Severability

720 CMR: Massachusetts Department of Highways

13.01: Authority, Scope, and Objective

(1) Authority

The Massachusetts Department of Highways (“MassHighway”) adopts this regulation under the authority of M.G.L. c. 81, §21 and M.G.L. c. 85, §2. This regulation supersedes the Standard Operating Procedures for Review of State Highway Access Permits” adopted September 17, 1991. MassHighway may issue Standard Operating Procedures from time to time to implement this Regulation.

(2) Scope and Intent

This regulation applies broadly to two types of permit applications to MassHighway: (a) Vehicular access permits; and (b) Non-vehicular access permits. See §§ 13.02(2) – (5). Applications for vehicular access permits are intended to benefit from the expedited permit review features contained herein, §§ 13.03(5), (6), as well as to the procedures for administrative appeals, § 13.05(7), as the grant or denial of such permits may affect the rights of specific persons. Applications for non-vehicular access permits while they will be reviewed expeditiously will not be afforded the expedited review features and will not be subject to administrative appeals as there is no right to conduct the activities for which such permits are sought on the state highway layout (“SHLO”). 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 (“DHD”) 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 DHD upon which the DHD can evaluate the request and base the determination. The DHD will issue such determination in writing within 10 business days of receipt of such necessary and appropriate information.

13.02: Definitions

(1) 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.

(2) Permit

A vehicular or non-vehicular access permit as further defined below.

(3) Category I - Minor Vehicular Access Permits

Access permits for projects that require entry to the SHLO, require little to no non-signalized modifications, and do not significantly alter the operating characteristics of traffic; These projects ordinarily do not exceed MEPA transportation thresholds beyond the filing of an Environmental Notification Form (ENF), and they will be reviewed by the DHD of the District within which the project is located.

(4) Category II - Major Vehicular Access Permits

Access permits for projects that require significant non-signalized modifications that may alter the operating characteristics of traffic at a residential or commercial driveway at its intersection with the SHLO ; that require significant non-signalized modifications that may alter the operating characteristics of traffic at any other intersection under the jurisdiction of MassHighway or upon any roadway under the jurisdiction of MassHighway; that require installation of a new traffic signal at a residential or commercial driveway at its intersection with the SHLO or at any other intersection under the jurisdiction of MassHighway or upon any roadway under the jurisdiction of MassHighway; that require modification of structures, equipment, or hardware at an existing traffic signal at a residential or commercial driveway at its intersection with the SHLO or at any other intersection under the jurisdiction of MassHighway or upon any roadway under the

June 28, 2007

720 CMR: Massachusetts Department of Highways

jurisdiction of MassHighway or that require the use of explosives to remove material from within 250 feet of the SHLO. These projects ordinarily require MEPA review, and the proposed project will be reviewed by the DHD of the District within which the project is located and the appropriate sections of MassHighway's Headquarters Office in Boston.

(5) Category III – Complex Vehicular Access Permits

Access permits for projects requiring actions similar to major projects, but which require a new or altered SHLO; that require significant non-signalized and/or signalized modifications within the SHLO 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 DHD of the District within which the project is located, the appropriate sections of MassHighway's Headquarters Office in Boston and the Federal Highway Administration ("FHWA"), if necessary.

(6) Non-vehicular Access Permits

- (a) Access to the State Highway Layout ("SHLO") for projects that do not involve physical modifications;
- (b) Connection to or discharge to any MassHighway drainage system (in cases where it can be shown that no practical alternative exists);
- (c) Construction or repair of utilities within the SHLO;
- (d) Tree-cutting or landscaping.

Non-vehicular access permits will be reviewed by the DHD of the District within which the project is located; provided, however, that the DHD may refer any such application to the Chief Engineer in Boston for review and the Chief Engineer may remove any such application from the District to Boston for review. Such permits shall be issued in conformance with MassHighway Standard Operating Procedures as they may from time to time be modified or amended.

(7) MEPA

The Massachusetts Environmental Policy Act (M.G.L. c.30, §§61-62H) and its implementing regulations (301 CMR 11.00).

(8) 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.

(9) Applicant

The person applying for a vehicular or non-vehicular access permit.

(10) Owner

The person owning the land from which access is being sought to the SHLO

(11) State Highway Layout

Commonwealth property under the custody and control of MassHighway being used for highway purposes; this does not include excess parcels that may have been acquired by MassHighway but which are not being used for highway purposes.

(12) 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;

720 CMR: Massachusetts Department of Highways

- (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 MassHighway to generate a measurable impact on traffic flow and safety.

(13) Project

Any work or activity undertaken by a person that requires or may seek vehicular and/or non-vehicular access to the SHLO.

13.03: Permit Application Processing

(1) Submission of Application

The DHD within whose District boundaries access is sought shall be responsible for issuance of permits. A permit applicant shall request issuance of a permit on a standard form issued by MassHighway and shall include all support material required on the application form. Appendix A contains the standard forms with lists of required support materials for permit applications. The application form shall be filed with the DHD within whose District boundaries access is sought.

(2) Completeness Pre-Review

Any materials submitted for MassHighway review as part of a permit application will be date-stamped by the District Permits Engineer upon his/her receipt. Upon receipt, the DHD or his/her designee shall review the contents of the application to determine if any materials necessary to conduct a detailed review are missing. The DHD or his/her designee shall notify the applicant of any missing documentation within 10 business days from the stamped date or the application will be considered complete and the detailed review period shall begin. The Pre-Review process shall be followed until the DHD or his/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 DHD or his/her designee once the following items have been received and determined to be in a format acceptable to conduct a detailed review:

- (a) MassHighway permit application form (see Appendix A), with all information items appropriately completed;
- (b) All supporting data as listed on the application form;
- (c) Evidence of Executive Office of Energy and Environmental Affairs (EOEEA) certification of compliance with the Massachusetts Environmental Policy Act (MEPA), 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 MassHighway, for those projects where an Environmental Impact Report (EIR) was required under MEPA relative to a MassHighway access permit, unless waived by MassHighway;
- (e) Engineering plans in a format acceptable to the DHD or his/her designee to conduct a detailed review where work within the SHLO 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 Commonwealth of Massachusetts in the then amount required by the Secretary of Administration and Finance in 801 CMR 4.02.

(4) Required Signatures for Permit Applications

The applicant must provide MassHighway with evidence certifying the consent to the application by the property owner(s), as required by MassHighway on the permit application form. If an agent is representing an applicant, the application shall include a notarized letter from the applicant outlining the specific duties

June 28, 2007

720 CMR: Massachusetts Department of Highways

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(s).

(5) Time Limits for Detailed Application Review

The maximum review times for 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 DHD or his/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 upon 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 10 business days upon receipt by the District Permits Engineer. Once the PS&E submission is approved, the DHD will issue the permit authorizing the work to be performed in accordance with the procedures outlined in Section 6 below.
- (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 DHD or his/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 upon 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 20 business days upon receipt by the District Permits Engineer. Once the PS&E submission is approved, the DHD will issue the permit authorizing the work to be performed in accordance with the procedures outlined in Section 6 below.
- (c) Category III Permits – Review submissions and associated review time frames will be negotiated by the applicant and MassHighway. 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, arbitration by an arbiter acceptable to both parties shall be used.

If MassHighway fails to meet any of the time frames outlined above, the applicant may notify the DHD 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 DHD or the Chief Engineer shall ensure that the applicable review is completed no later than 5 business days from receipt of such notification. Once the PS&E submission is approved, the DHD will issue the permit authorizing the work to be performed in accordance with the procedures outlined in Section 6 below.

(6) Five -Day Permit Issuance Deadline

Once the PS&E submission is approved, the DHD shall issue the associated permit within 5 business days. If the DHD has not issued the permit within 5 business days, the applicant may notify the Chief Engineer in writing. 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 Part 71) to properties listed in the State Register of Historic Places, either (i) a letter from the Massachusetts Historical Commission indicating compliance with M.G.L. Chapter 9, Sections 26-27C or (ii) certification from the applicant that the MHC failed to determine adverse effect within 30 days of its receipt of an Environmental Notification Form (ENF);
- (b) Evidence of approvals or decisions, if necessary, from the Conservation Commission in the community in which the proposed project is proposed; and
- (c) A Section 61 Finding issued by MassHighway, for those projects where an Environmental Impact Report (EIR) was required under MEPA relative to a MassHighway access permit, if previously waived by Mass Highway as part of the application process.

720 CMR: Massachusetts Department of Highways

(7) Recording of Permits

MassHighway will issue the permit to the applicant named on the permit application submitted to and reviewed by MassHighway. Unless otherwise noted, after expiration of all appeal rights, the applicant shall record any vehicular access permit or any non-vehicular access permit involving drainage at the appropriate registry of deeds. Any permit issued by MassHighway that requires recording shall not be effective until recorded at the appropriate registry of deeds and a notice of recording is submitted to the DHD.

(8) Coordination with MEPA Review

For projects requiring MEPA review, MassHighway will comment to the Secretary of Energy and Environmental Affairs 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 MassHighway Section 61 and access permit process. In order to minimize damage to the environment caused by transportation-related air pollution, including greenhouse gas emissions, MassHighway shall comment upon and review measures identified in the MEPA process to avoid, minimize or mitigate such transportation-related air pollution, and shall include in any permit conditions as set forth in the Secretary of Energy and Environmental Affairs' certificate incorporating 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. MassHighway coordination with MEPA review will reduce the total time required to obtain project approvals.

(8) Denial of a Permit Application

The DHD may deny the issuance of a permit due to the failure of the applicant to provide sufficient highway improvements to facilitate safe and efficient highway operations, or when the construction and use of the proposed access would create a condition within the SHLO that is unsafe that will interfere with the free flow of traffic or that endangers the public safety and welfare. Under M.G.L. Chapter 81, Section 21, the Board or Department in a municipality with authority over public roadways may notify MassHighway by registered mail of its objection to a proposed new or modified residential or commercial driveway intersecting the SHLO. If MassHighway agrees with the objection, which must be based on traffic safety concerns, MassHighway shall not grant the permit.

13.04: Criteria for Review of Applications

(1) Review of Engineering Plans

The DHD shall require that engineering plans and specifications provide for safe and efficient access, which protects the operational integrity of the State Highway. 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, MassHighway's Project Development & Design Guide or its successor, MassHighway's Standard Specifications for Highway and Bridges and any current technical policies or engineering directives issued by MassHighway.

(2) Permit Conditions

The DHD shall condition a permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, 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;

June 28, 2007

720 CMR: Massachusetts Department of Highways

- (f) Design and construction of necessary highway improvements by the permittee;
- (g) Reimbursement by the permittee of costs of MassHighway inspection of highway improvement work; and
- (h) The requirements of the M.G.L. Chapter 30, Section 61 Finding of MassHighway, where applicable.

(3) Design Exceptions

MassHighway recognizes 13 controlling criteria which, if not met, require formal approval of design exceptions. These criteria are listed in the Massachusetts Highway Department Project Development and Design Guide. 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 MassHighway's Project Development & Design Guide and shall be signed by Registered Professional Engineer. All exceptions must be approved by the Chief Engineer.

In addition to design exceptions from controlling criteria, any exceptions to full compliance with 521 CMR, The Rules and Regulations of Massachusetts Architectural Access Board, must also be identified in the Access Permit. The applicant is responsible for obtaining all necessary variances from the Access Board. MassHighway shall not issue any permit that is not in compliance with 521 CMR.

(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 DHD 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) M.G.L. Chapter 30, Section 61 Finding

For all projects that receive EOEEA certification of a Final EIR, which was scoped for a MassHighway access permit, MassHighway will issue a M.G.L. Chapter 30, Section 61 Finding at the applicant request within 25 days for Category II projects or 40 days for Category III projects. The Section 61 Finding shall indicate that MassHighway has completed its review of the project in the context of MEPA and that the proposed land use is approved by MassHighway subject to the conditions outlined in the Finding. The Finding shall be incorporated by reference into any permit to be issued by MassHighway 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 the section of this regulation entitled "Temporary Access Permits for Site Construction and Related Activities." 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.

13.05: Access Permit Provisions

(1) Duration of Permits

- (a) Construction - Construction of the proposed project, work or activity within the SHLO under the terms of a permit must be completed within one year of the date of issue, unless otherwise stated in the permit. The DHD may extend the permit by an additional 1 year upon written request of the applicant or permittee, provided said request is filed prior to the expiration of the original permit.
- (b) Use - permits upon issuance shall allow ingress to the property served and egress to the State Highway for an indefinite period, but a new permit shall be required when:

720 CMR: Massachusetts Department of Highways

1. More than five (5) years has lapsed between the date of issuance of a permit and the start of construction of the use or facility;
2. Constructing, reconstructing, or expanding an existing facility on the property served, which results in a Substantial Increase in or Impact on Traffic on the State Highway;
3. Constructing a new access or modifying an existing permitted access; or
4. When a permit would otherwise be required based on these regulations.

(2) Temporary Access Permits for Site Construction and Related Activities

Upon receipt of an application, the DHD may grant a temporary access permit for site access for the purpose of performing site construction, land surveying, land clearing, project preparation, and related activities. Temporary access permits shall specify an expiration date, which shall not exceed one year from the date of issuance. Temporary access permits shall not allow building occupancy or use of the driveway(s) by the public. Temporary access permits may be issued for construction and related activities that precede a project that requires the filing under the MEPA with EOEEA for a MassHighway access permit, provided the site access construction or use in and of itself does not exceed any MEPA thresholds. The issuance of a temporary access permit 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.

(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 DHD or his/her designee by the permittee.

(4) Suspension or Revocation of Permit

When the DHD 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.

(a) Suspension

1. Emergency Suspension – In the case of an emergency condition or imminently unsafe travel conditions within the SHLO that is due to non-compliance with conditions on a permitted facility, the DHD or his/her designee may issue a verbal warning of permit suspension to a permittee requiring compliance with the permit. Within 24 hours, if the condition continues, the DHD 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 DHD 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 DHD 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. Chapter 30A, Section 13. Prior to establishing a revocation hearing, the DHD shall notify the Commissioner and send a copy to the Chief Counsel's Office.

(5) Enforcement

MassHighway may issue written orders to enforce the provisions of M.G.L. Chapter 81, Section 21, or the provisions of any permit, order, or approval issued under M.G.L. Chapter 81, Section 21. Any person who violates any provision of this regulation shall be punished in accordance with M.G.L. Chapter 81, Section 21.

(6) Performance Bonds

The DHD may require a performance bond, to be posted by the applicant for the estimated cost of the construction within the SHLO and possible damages. The limits of said bond shall be in accordance with

June 28, 2007

720 CMR: Massachusetts Department of Highways

Chapter 81, Section 21. The performance bond shall be posted by the permittee prior to the issuance of the permit.

(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 Commissioner. Upon consultation with the permit applicant and appropriate MassHighway personnel, and after a hearing under the provisions of M.G.L. Chapter 30A, Section 13, if required, the Commissioner may uphold, modify, or overturn the action or decision of the DHD.

13.06: Miscellaneous

(1) Transition

Any permit application first submitted within 6 months of the effective date of this regulation that has not been acted upon shall in the sole discretion of MassHighway be resubmitted and such application shall be reviewed under the provisions of these regulations. All applications still under review may at the option of the applicant be resubmitted for review under the provisions of these regulations.

(2) Severability

The provisions of this regulation 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.